

To Combat Central America's Bad Governance, Biden Can't Just Throw Money at the Problem

by Naomi Roht-Arriaza

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President Joe Biden faces a dilemma: in order to stem the migrant exodus from Central America, the governance systems of those countries need a thorough overhaul, which will cost a lot of money. Yet simply pouring money into countries with corrupt administrations, legislatures, judiciaries, and elites will amount to little more than refilling a leaky bucket. In Guatemala, El Salvador, Honduras, and Nicaragua, the last four years have unwound prior gains, and challenges to anti-impunity and anti-corruption work are growing. Although the countries have different dynamics and timelines, all have been backsliders.

Under these circumstances, the \$4 billion that Biden promised to spend to improve life for Central Americans will have to be carefully managed to avoid simply being sucked into the kleptocracy machine. It's not just about prioritizing governance, but about doing so smartly. That requires a granular approach. The Biden administration is already signaling that it will aim to funnel the funding to reliable partners and require transparency in accounting as well as progress on anti-corruption. Members of Congress are demanding the same. A few concrete measures could immediately help re-establish a firm foundation.

A few years ago, hybrid international-state mechanisms established to strengthen prosecutors' offices were celebrated for their apparent successes. The most ambitious and successful, the International Commission Against Impunity in Guatemala (CICIG), led to more than 400 criminal convictions over 11 years, including heads of state, legislators, judges, and executives, and dismantled some 70 criminal networks (see prior *Just Security* coverage). Honduras' MACCIH (Mission to Support the Fight Against Corruption and Impunity in Honduras) over its much shorter lifespan managed to stand up a vetted anti-corruption prosecutors' unit and investigate a number of high-profile

cases. The newest and weakest of these mechanisms, the International Commission against Corruption and Impunity (CICIES) in El Salvador, is working with the prosecutor there on Covid-related frauds, among other graft.

But much of this progress was reversed under the Trump administration, and Biden can't turn the clock back. While innovative mechanisms like CICIG opened opportunities, created victories, and stimulated changes in criminal procedure, the constellation of factors that made these ad-hoc mechanisms possible are very unlikely to be repeated. All depend on legislative and judicial authorization as well as political will from the executive, and none of that is likely to be forthcoming from governments controlled by the same old corrupt forces (or in El Salvador, new authoritarian forces with little appetite for outside scrutiny). A regional mechanism will face the same headwinds, although corraling support from other countries in the region might make it more viable.

Leveraging U.S. Aid

There is, however, a way to take advantage of the important work those mechanisms carried out: require states, as a condition of receiving U.S. funds, to implement the recommendations of CICIG, MACCIH and CICIES. All three mechanisms left behind (or in El Salvador are still creating) extensive reform proposals to enhance anti-corruption and anti-impunity work. In the case of Guatemala, CICIG proposed far-reaching reforms to the judicial-selection process. It proposed other significant reforms to allow better access to justice, minimize malicious prosecutions and delay tactics, professionalize justice-sector personnel, and separate judicial from administrative tasks. These were never implemented. MACCIH also left a roadmap of needed reforms, and CICIES has begun to recommend changes in several areas.

In all three cases, victims' access to the courts was a key to the reforms, but has been narrowed by courts, especially in corruption cases. Corrupt officials are maneuvering to close out the cases left by CICIG and MACCIH without further investigation. The U.S. Congress and the Biden administration should insist on a roadmap, timeline, and milestones for the proposed reforms, and on monitoring of the remaining CICIG and MACCIH dockets, to be built into how and when funds are disbursed.

Biden has said he will ask U.S. Department of Justice (DOJ) prosecutors to work with their local counterparts in the region. But simply teaching better technical skills is not what prosecutors need. In all three countries, crusading attorneys general have been replaced with those uninterested in taking on powerful state and elite private interests (with the partial, and probably temporary, exception of Raúl Melara in El Salvador). It's the specific units within those offices, like the FECI (anti-corruption) or the human rights crimes units in Guatemala and the UFERCO anti-corruption unit in Honduras, that need direct support — political, security, and diplomatic even more than technical and financial. Any funds to these units will need to be sheltered from siphoning by other parts of the AG's offices, while the United States also works to nudge these offices towards greater efficiency and probity.

Judges who stand up for the rule of law are becoming an endangered species in the region. In each country, these judges are under attack. Anti-impunity judges on Guatemala's Constitutional Court have faced constant threats of impeachment and worse, and the current judicial-selection process has already shown continuing improper influence. Guatemala, in part with the help of CICIG, created high-risk trial courts for corruption, organized crime, and human rights cases, but then has left the anti-impunity judges on that court facing constant harassment, even threats, attempted prosecution, and disbarment. In El Salvador, there have been attempts to remove the judge in the El Mozote massacre (which I have discussed here) from the case, and these kinds of maneuvers can be expected to increase as the criminal trial inches forward. Biden could explicitly support these judges, and make non-interference in their cases a *sine qua non* of any assistance.

Breaking Up Coalitions of the Corrupt

As others have suggested, the anti-graft penalties of the Engel List and Global Magnitsky Act should be applied strategically, to break apart and weaken coalitions of the corrupt. That would open opportunities for legislative change (including campaign finance reform), and for the emergence of new political forces with clean hands.

To accomplish that, the United States would need to redefine its overarching goal from the temporal pursuit of regional stability at all costs. During the Obama years, a narrow definition of stability did not serve the United States well. It led, for example, to the

decision to support the 2009 coup in Honduras, which opened the way for the present corrupt and criminal regime. In 2015, amid massive popular protests in Guatemala and the resignation of the president and vice-president on allegations of corruption, the United States insisted on maintaining the electoral calendar despite widespread calls for a postponement until electoral financing and administration could be cleaned up. The result was Jimmy Morales, whose effort to hide his illegal campaign financing and his family's corruption led to the ouster of CICIG. President Biden, who was close to those decisions, should learn from them. Sustainable stability will require a different U.S. approach.

Finally, vastly augmented resources without strict accountability will only backfire. It's not just that money should not be given directly to corrupt government leaders and ministries. Even private sector and civil society groups should be vetted for their authenticity, leadership, and local reputations. Organized crime and other corrupt forces have been known to create their own civil society groups to receive and divert funds, and local elites have long been complicit in corrupt schemes.

It's especially important that USAID funds, including public-private partnerships in areas where corruption has flourished (like health, housing, energy, and infrastructure), be carefully monitored and partners vetted before any money is disbursed. There are groups in the United States and throughout the region that can provide information on the composition of corruption networks, who's who, and whether recipients are known for probity.

Whistleblowers and local communities adversely affected by projects (or by any corrupt diversion of the funds) will need to have easy access to financial and social accountability mechanisms within USAID and other U.S. agencies. Such protections will add time to project design and implementation. But in the long run, it will give hard-won U.S. assistance dollars the best chance of actually reaching the people of the region to create the conditions they need for a livable life that they don't want – or need — to leave.

IMAGE: A medical doctor wearing a mask representing Honduran President Juan Orlando Hernandez takes part in an anti-corruption protest in Tegucigalpa on Sept. 11, 2020, amid the new coronavirus pandemic. (Photo by ORLANDO SIERRA/AFP via Getty Images)

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